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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,235	12/16/2003	Jody Lynn Hoying	9456	6351

27752 7590 08/24/2005

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EXAMINER	
PIERCE, JEREMY R	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/737,235	HOYING, JODY LYNN	
	Examiner	Art Unit	
	Jeremy R. Pierce	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4/6/04*..
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, 8, 12, 14, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Provost et al. (US 2004/0157036).

Provost et al. disclose a fibrous layer adjacent to a carrier sheet wherein the fibrous are needled through the carrier sheet to form loops on the other side (Abstract and Figures 2-4). With regard to the limitation that the fibrous layer has random orientation with respect to the X-Y plane, Applicant has defined this limitation as including carded nonwoven webs (see claim 7). Provost et al. use a carded layer of fibers (paragraph 11), so the fibrous layer meets the random orientation limitation. With regard to claim 3, Provost et al. teach a nonwoven fabric may be the carrier sheet (paragraph 29). With regard to claims 4 and 5, the carrier sheet may be an apertured film (paragraph 29 and Figures 2-4). With regard to claim 8, the regions can be uniformly distributed (see Figure 9).

3. Claims 1-3, 6-9, 12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Tranfield (U.S. Patent No. 3,684,284).

Tranfield discloses a fabric wherein a fibrous batt of randomly oriented thermoplastic fibers is needled through an adjacent layer of knitted cotton to form tufts on the other side of the knitted fabric (column 3, lines 22-38 and Figures 6-7). Discrete regions are formed wherein a portion of fibers are disposed substantially perpendicular to the pile surface penetrating through the layers of knitted fabric (column 3, lines 45-50).

4. Claims 1-3, 6-10, and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sorimachi et al. (U.S. Patent No. 5,508,080).

Sorimachi et al. teach a laminated material wherein filaments of a web are penetrated through a nonwoven fabric (Abstract). The web has a random orientation in the X-Y plane because it is formed from entangled fibers (column 3, lines 54-56) and no particular orientation is described. Needling creates discrete portions of fibers extending towards the nonwoven fabric in a uniform fashion, as can be seen in the Drawings. With regard to claim 6, the caliper of the web of fibers and the nonwoven fabric is different (see Figure 2). With regard to claim 7, the nonwoven fabric layer is spunbonded (column 8, lines 20-21). With regard to claim 9, various thermoplastic fibers are used (column 3, lines 54-56). With regard to claim 10, bicomponent fibers may be used (column 8, lines 14-16). With regard to claim 12, the fibers of the web may extend through the nonwoven fabric (see Figure 2). With regard to claim 13, the

fibers of the web may only entangle with the nonwoven fabric and not extend through (column 4, lines 37-43 and Figure 1).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sorimachi et al. in view of Kotek et al. (U.S. Patent No. 6,120,718).

Sorimachi et al. teach fibers may be hollow in order to provide a voluminous texture (column 8, lines 13-15), but fail to teach the fibers to be non-round. Kotek et al. disclose that higher void volume may be achieved with hollow fibers that are lobal (column 1, lines 32-45). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use non-round fibers in Sorimachi et al. in order to increase bulk, as taught to be known by Kotek et al.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No. 10/737,306. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to a fibrous article comprising similar longitudinal orientations of fibers in discrete areas in one layer with similar dependent claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of copending Application No. 10/737,307. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '307 Application is directed to a fibrous article with differing properties between the layers and areas of discrete tufts.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/737,430. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to a fibrous article comprising similar longitudinal orientations of fibers in discrete areas in one layer with similar dependent claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 1-15 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44 of copending Application No. 10/737,640. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '640 Application also claims a fibrous web with discrete areas of fibers having linear orientation in the direction of tufts formed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US 2004/0022993 to Wildeman.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571)

272-1479. The examiner can normally be reached on normal business hours, but works flextime hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRP
Jeremy R. Pierce
August 17, 2005

ELIZABETH M. COLE
PRIMARY EXAMINER